

ANNUAL REPORT ON AGENCY MANAGEMENT OF COMMERCIAL ACTIVITIES

The Environmental Protection Agency (EPA) is pleased to submit its Year 2001 Annual Report on Agency Management of Commercial Activities. This annual report, submitted in accordance with Office of Management and Budget (OMB) Circular No. A-76 and the Revised Supplemental Handbook (Appendix 2, paragraph I) (the "Circular" or "Revised Supplemental Handbook"), details the Agency's implementation of the requirements of the Federal Activities Inventory Reform (FAIR) Act of 1998 including the process of conducting EPA's 2000 Inventory of Commercial Activities, the results of the 2000 Inventory, the FAIR Act challenge and appeal process followed in 2000, and the current status of EPA's Year 2001 FAIR Act Inventory.

I. 2000 Inventory Process

EPA prepared the 2000 Inventory as required by the FAIR Act to provide a comprehensive report of all EPA potential commercial activities and the full time equivalents (FTEs) performing them in 2000. The 2000 Inventory was the result of a very careful and considered process of reviewing and measuring EPA's functions and activities against the criteria outlined in the FAIR Act, Circular A-76 and the Revised Supplemental Handbook, Office of Federal Procurement Policy Letter 92-1, Federal Acquisition Regulation 7.5, and any other relevant considerations. EPA's 2000 Inventory also followed the guidelines set forth in OMB's April 27, 2000 supplemental FAIR Act guidance for the Year 2000 Inventory.

As with EPA's 1999 Inventory, EPA's Office of the Chief Financial Officer (OCFO), located at EPA's Headquarters in Washington, D.C., assigned the responsibility for developing the Agency's 2000 Inventory to the Agency's 13 program and 10 regional offices. EPA did this because it was believed that program and regional officials would be more knowledgeable and familiar with the Agency's specific activities and thus be in a better position to provide accurate designations for those activities in the 2000 Inventory. In addition, as part of the process of developing the 2000 Inventory, EPA convened an Agency-wide workgroup composed of headquarters, program, and regional officials, and union representatives, to emphasize the importance of assessing each Agency function and activity carefully against the relevant criteria. EPA Headquarters provided direction, oversight, resources, and counseling to assist the offices in developing their portions of the 2000 Inventory. In addition, the offices' submissions were reviewed by OCFO to ensure that the determinations made were reasonable and consistent with applicable guidance.

In the 2000 Inventory, EPA followed a general rule (in the absence of specific OMB guidance) that if less than 50 percent of an FTE's activities were inherently governmental, then the FTE should be allocated between inherently governmental and commercial activities. If more than 50 percent of the

FTE's duties were inherently governmental, the FTE should be designated as inherently governmental.

EPA submitted its 2000 Inventory to OMB on June 30, 2000. As required under the FAIR Act and the Circular, the 2000 Inventory was subject to an OMB "review and consultation process." As part of this process, OMB reviewed the 2000 Inventory and voiced no objections to the structure, content, or format of the inventory. On October 3, 2000, OMB published in the Federal Register a notice of public availability of the 2000 Inventory indicating that the 2000 Inventory was ready for public dissemination. This notice of public availability included EPA's website address to which EPA posted its 2000 Inventory (www.epa.gov/efinpage What's New), together with the name and telephone number of EPA's central point-of-contact for the Inventory (George Ames, 202/564-4998).

II. 2000 Inventory Results

The results of EPA's 2000 Inventory identified approximately 3.5 percent, or 603 FTEs, out of a total of 17,725 FTEs performing potential commercial activities. Our inventory did not include FTE from the Office of the Inspector General. They submitted their inventory separately. Also, EPA's 2000 Inventory showed a decrease in FTEs due in part to OMB's instruction regarding removal of the GS-318 secretarial series and the management support function code from the Inventory.

The majority of functions (536.7 FTEs) on the 2000 Inventory represented core commercial capability functions (Reason Code A, per the Revised Supplemental Handbook) to be retained in-house. In reaching this conclusion, EPA considered the nature of the function and the context within which it is performed, the degree of discretion exercised by individuals performing the function, the sensitivity and confidentiality of the information required to perform the function, and the significance of the function to core Agency activities and responsibilities. Furthermore, as a regulatory Agency, EPA also considered the need to maintain appropriate in-house knowledge, experience, and staffing capabilities to effectively apply, administer, implement, and enforce the nation's environmental laws in fulfilling EPA's mission and meeting complex, unique, sensitive, and emergency environmental requirements.

EPA further classified 54 FTEs on the 2000 Inventory as performing commercial activities which were exempted from the provisions of the Circular and Revised Supplemental Handbook by Congress, Executive Order, or OMB (Reason Code C, per the Revised Supplemental Handbook).

The 2000 Inventory also designated 12 FTEs as performing potential commercial activities that were subject to the cost comparison or direct conversion requirements of the Circular and the Revised Supplemental Handbook (Reason Code B, per the Revised Supplemental Handbook). Upon further review, however, EPA determined that these 12 FTEs could have also properly been classified as performing commercial activities specifically exempted from the provisions of the Circular and Revised Supplemental Handbook by Congress, Executive Order, or OMB (Reason Code C, per the Revised Supplemental Handbook). The exemption is described in the Revised Supplemental Handbook, Chapter I, paragraphs C.6 and D.5, which generally allows for Government performance of

commercial activities involving 10 or fewer FTEs.

The Agency's 2000 Inventory included all of the applicable data elements described in the Revised Supplemental Handbook and other relevant guidance. To further enhance the understandability of the 2000 Inventory, EPA linked commercial activities to Agency programs and performance by including an "EPA Goal" category. This category relates to the ten goals developed for the Agency's strategic plan pursuant to the Government Performance and Results Act and reflects the Agency's environmental priorities as articulated by Congress in the form of statutory mandates and authorities.

Further, in a letter accompanying EPA's 2000 Inventory, EPA presented the scope of current contracting efforts to provide context for the 2000 Inventory. EPA emphasized that the amount and variety of services that EPA currently obtains through extramural resources is very significant in relationship to the Agency's in-house staffing needs. As reported in 2000, EPA's extramural budget is 74 percent of its total dollars and requires a major commitment of FTEs to manage contracts, grants, cooperative agreements, interagency agreements, and senior environmental employees. In fact, in the past, the Congress and the General Accounting Office have criticized EPA for being too contractor dependent.

III. Challenges and Appeals of the 2000 Inventory

EPA received three challenges to its 2000 Inventory. EPA's OCFO was the initial point of contact for challenge submissions. Offices whose FTEs were affected by the challenge provided detailed input into the written challenge decision, which was reviewed by both OCFO and the Agency's Office of General Counsel. EPA carefully and seriously evaluated each challenge in accordance with the criteria set forth in the FAIR Act, the Circular and the Revised Supplemental Handbook, the Federal Acquisition Regulation, and other relevant considerations. EPA denied the challenges it received with well-reasoned and responsive justifications in a timely manner. Each challenge decision notified the interested party of its appeal rights. EPA received no appeals of its challenge decisions.

IV. The Year 2001 FAIR Act Inventory

EPA is developing its 2001 FAIR Act Inventory using the same process followed for its 1999 and 2000 Inventories, and consistent with OMB guidance for 2001. EPA will also be submitting to OMB a separate report that lists the Agency's inherently governmental positions. EPA appreciates the interest in its inventories and remains committed to contracting out wherever and whenever it is deemed appropriate.